IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.116 OF 1996.

The State of Maharashtra : Appellants.

versus

Parashram Shamji Nikam : Respondent.

Mr.B.R.Pati, Acting Government Pleader for the appellants.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 15th March 2005.

ORAL ORDER

1. Heard Mr.Patil for the State. The State has filed this appeal against the order of the Joint District Judge, Nashik dated 26th March 1993 passed in Review Petition under Land Acquisition Act. The review petition was filed by the original claimant under Sections 23 and 28

of the Land Acquisition Act. It was his contention that Award was declared by the SLAO on 6.5.1977. He was not satisfied by it and, therefore, he filed a Reference under Section 18 to the Court. That Reference was allowed and, additional compensation of Rs.3,885.70 with solatium and future interest was awarded on 19.2.1983.

2. He further submitted that the Land Acquisition (Amendment) Act came into force on 24.9.1984 and Section 23(1) with its sub-clauses was inserted by way of amendment by which the claimants were benefited and that was made applicable to all the matters which were pending on or before 30.4.1982 and, therefore, he was entitled to interest at 12% on the market value for the period commencing from the date of publication of notice under Section 4 and the date of award or the date of taking possession of the land whichever is earlier. Accordingly, the Reference Court allowed the review application and passed the impugned order. There are three parts of the said order. By the first part, the claimant was declared to be entitled to the solatium at the rate of 15% on the total market

value; by the second part the claimant was declared to be entitled to the interest on the additional market value awarded by the Reference Court and; by the third part, interest was awarded to the claimant in respect of the amount of compensation fixed by the SLAO and paid to the claimant though under protest. This Part-III of the impugned order is challenged in this appeal.

3. The learned AGP submitted that there was no justification in awarding the interest on the amount of compensation and paid by the SLAO at 9% p.a. for the first year and 15% for the subsequent year from the date of taking possession till the date of realisation.

4. This contention is fully justified. Interest cannot be again and again granted on different amount. The amount awarded by the SLAO was taken by the claimant under protest and, at least there is nothing on record to show otherwise and, therefore, this Part 3 of the operative order is liable to be quashed and set aside. Hence the following order :-

:ORDER:

The appeal is allowed.

The impugned order i.e. Part III of the impugned order is modified. The SLAO will be entitled to pay interest at 9% from the date of Notification under Section 4 (1) till the date of actual payment of the amount to the claimant.

[D.G.DESHPANDE]

15/03/2005 JUDGE.